

19 October 2012

Marisa De Cicco  
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Dear Ms De Cicco



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## **ADVICE ON THE ADEQUACY OF REGULATORY IMPACT STATEMENT**

Thank you for seeking advice on the Regulatory Impact Statement (RIS) on the proposed Supreme Court (Fees) Regulations 2012 and the County Court (Fees) Regulations 2012.

The Victorian Competition and Efficiency Commission (VCEC) advises on the adequacy of RISs as required under section 10(3) of the *Subordinate Legislation Act 1994* (the Act). I advise the final version of the RIS received by the VCEC on 19 October 2012 meets the requirements of section 10 of the Act.

The VCEC's advice is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis. **Therefore, the VCEC's advice the RIS is adequate does not represent a view on the merits of the proposal itself.**

Section 10 of the Act requires that a RIS include:

- *"an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; [and]*
- *the reasons why the other means are not appropriate..."*

Further, the *Victorian Guide to Regulation* (pp. 58-59) states that the VCEC is responsible for assessing that the analysis of the costs and benefits presented in the RIS is adequate for consultation and that any judgements made in the RIS are transparent and supported by appropriate information and evidence.

The VCEC notes that several principles are used to develop the options for Supreme Court fees, including an aggregate percentage target for cost recovery for all Supreme Court fees; full or partial cost recovery for certain fees based on judicial or administrative input, and; full or over-recovery of probate fees. Additional principles are used to design option 5 (the preferred option), which further complicates the trade-offs that need to be made between each of these principles and the presentation of the analysis in the RIS.

The RIS describes each of the principles used to design the different options for the Supreme Court fees, including 'consistency with Federal Court fees' and 'proportionality of fee increases'. The RIS also explains the judgements and trade-offs made by the Department to determine the preferred option for setting commencement and hearing fees for the Supreme Court and either includes relevant evidence and data supporting these judgements or notes that such information is not available.

The VCEC also notes the preferred option for the proposed Supreme Court (Fees) Regulations involves the significant over-recovery of costs associated with probate activities and that the additional revenue collected is to be used to subsidise other fees charged by the Supreme Court. The RIS describes the impact of this approach on affected parties and the relevant judgements and trade-offs made in determining the preferred option for probate fees.

In this context, stakeholder feedback received via the public consultation process will be important to test the judgements and trade-offs made by the Department and to validate the preferred options presented in the RIS.

The VCEC acknowledges the work undertaken by the Department to improve the quality and transparency of the analysis in the RIS. In particular, the VCEC notes that the Department has worked to improve the cost information from the Supreme and County Courts used to inform the analysis in the RIS, but that significant limitations and gaps remain with this information. The RIS includes an explanation of the approach and the limitations of the available cost information to inform the analysis of different fees options.

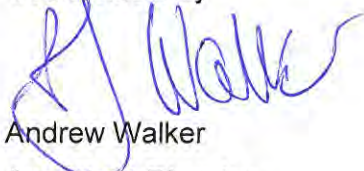
The proposed Regulations are intended to expire in 2017 and the VCEC notes that substantial analysis will be necessary to ensure that future RISs prepared for the Supreme and County Court fees are sufficient to meet the requirements of the Act. The VCEC considers that such analysis will need to include:

- A comprehensive analysis of the underlying costs of all aspects of the different court jurisdictions (focussed on the highest cost and volume activities).
- Development of clear, coherent and robust policy principles to inform the analysis of alternative cost recovery approaches. Relevant considerations are likely to include the role fees can play to ensure the optimal use of court services, the level of public benefits, access to justice considerations and the appropriateness of relativities (if any) between different jurisdictions, with appropriate supporting data and evidence to inform the practical application of these principles.
- Consideration of a wide range of fee options, including, but not limited to, alternatives to a 'block fees' model, differential hearing fees for different court users (for example, individuals and corporations) and fee waivers. The VCEC notes that some of these options may require legislative amendment.

In the interests of transparency, it is government policy VCEC's advice be published with the RIS when it is released for consultation.

If you have any questions, please contact [RegulationReview@vcec.vic.gov.au](mailto:RegulationReview@vcec.vic.gov.au).

Yours sincerely



Andrew Walker

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**Victorian Competition and Efficiency Commission**